

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**WILLIAM D. WAYMAN v. WAYNE BRANDON, WARDEN
and the STATE OF TENNESSEE**

**Direct Appeal from the Circuit Court for Hickman County
No. 05-5106C Jeff Bivens, Judge**

No. M2006-00299-CCA-R3-HC - Filed July 19, 2006

Petitioner, William D. Wayman, filed a petition for writ of habeas corpus relief in the Hickman County Circuit Court. In support of his petition, he alleged that his concurrent sentences for three convictions in the Rutherford County Circuit Court for reckless aggravated assault have expired. The habeas corpus trial court summarily dismissed the petition. Petitioner has appealed, and the State has filed a motion for this Court to affirm the judgment pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. After review of the record, we grant the State's motion, and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

William D. Wayman, Only, Tennessee, *pro se*.

Paul G. Summers, Attorney General and Reporter; and C. Daniel Lins, Assistant Attorney General, for the appellee, the State of Tennessee.

MEMORANDUM OPINION

On March 15, 2001, Petitioner pled guilty to three counts of reckless aggravated assault and received a sentence of six (6) years for each offense, to be served concurrently. He also pled guilty to the misdemeanor offense of driving on a revoked license and received a concurrent sentence of six months. For each conviction, he was given pre-trial jail credit for the period of October 11, 2000 to March 15, 2001.

He was placed on six (6) years probation effective March 15, 2001.

Petitioner alleges in the Petition that the total pre-trial jail credit was 156 days. He further alleges that on May 17, 2002, his probation was violated and he served 171 days in jail until being placed back on probation. He alleges that his probation was violated again on January 8, 2003 and he spent 159 days in jail awaiting the revocation proceeding and transportation to serve the remainder of his sentence in the Tennessee Department of Correction. Petitioner alleges that he has served a total of 486 days (or approximately one year and four months) of jail time toward his effective sentence of six years.

From these calculations alleged in the petition, it is clear that the effective sentence of six years has not expired based upon the time that Petitioner has spent incarcerated. Petitioner's petition however, alleges that he is also entitled to an additional 322 days for program credits and behavior credits.

Petitioner alleges that the total number of days to which he is entitled credit equals 808 days. Petitioner then "subtracts" the 808 days from the expiration date of his sentence, being February 16, 2008, and alleges, therefore, that his sentence expired on October 31, 2005.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated section 29-21-101, *et seq.* codifies the applicable procedures for seeking a writ. While there is no statutory time limit in which to file for habeas corpus relief, Tennessee law provides very narrow grounds upon which such relief may be granted. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A habeas corpus petition may be used only (1) to contest void judgments which are facially invalid because the convicting court was without jurisdiction or authority to sentence a defendant; or (2) if a petitioner's sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993).

Any claim or issue as to jail time credits such as behavioral credits or program credits, is not cognizable in a habeas corpus petition alleging that the sentence has expired. *See Carroll v. Raney*, 868 S.W.2d 721, 723 (Tenn. Crim. App. 1993) ([T]ime credits, being internal matters, are generally inappropriate considerations in a habeas corpus proceeding. The validity of any sentence reduction credits must be addressed through the avenues of the Uniform Administrative Procedures Act.”).

Furthermore, even taking the allegations of the petition as factually correct, that Petitioner was entitled to credit for a total of 808 days (including both actual incarceration time and program and behavior credits) he would have only served approximately 2.2 years of his six-year sentence. “Subtracting” the 808 days from the projected expiration date of February 16, 2008, is not an appropriate calculation to substantiate a claim for relief of an expired sentence. The petition was signed by Petitioner on November 8, 2005. Taking as true everything alleged in his petition, he would have served, up to that point, 2.2 years of his six-year sentence. Accordingly, the petition does not show that the sentence has expired. Petitioner is not entitled to relief.

CONCLUSION

The judgment of the trial court was rendered in a proceeding before the trial court without a jury, the judgment is not a determination of guilt, and the evidence in the record does not preponderate against the finding of the trial court. No error of law requiring a reversal of the judgment is apparent on the record. Accordingly, the judgment of the trial court is affirmed pursuant to Rule 20, Rules of the Tennessee Court of Criminal Appeals.

THOMAS T. WOODALL, JUDGE